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No.

IN THE

Supreme Court of the United States

HERMAN E. MITCHELL,
Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL,
Respondents

On Petition for Writ of Certiorari
To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Timothy T. Mitchell
Counsel of Record
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QUESTION PRESENTED

1. Did fraud upon the court occur when two attorneys made a joint decision to intentionally withhold and conceal the "coverage card" and the underwriting file relating to an insurance policy followed by the two attorneys intentionally making false statements in deposition testimony, preparing and submitting false affidavits and preparing and submitting false pleadings and making false statements in open court to conceal the existence of the "coverage card" and underwriting file?

2. Did the Fifth Circuit and the District Court commit error by failing to determine whether or not fraud upon the court had occurred in conflict with two decisions of this United States Supreme Court and in conflict with three decisions of the Fifth Circuit and in conflict with nine decisions of the Second, Fourth, Sixth, Seventh, Eighth and Ninth Circuits.

PARTIES

The Petitioner is Herman E. Mitchell, Plaintiff and Appellant in the underlying action.

The Respondents are Metropolitan Life Insurance Company and Allstate Life Insurance Company, Defendants and Appellees in the underlying action.

CORPORATE DISCLOSURE STATEMENT

Respondents Metropolitan Life Insurance Company and Allstate Life Insurance Company are publically traded companies.

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OPINIONS BELOW

The June 2, 2005 denial of rehearing and en banc review by the Fifth Circuit Court of Appeals is appended hereto. (App. 1-2)

The May 9, 2005 opinion of the Fifth Circuit Court of Appeals is appended hereto, *Mitchell v. Metropolitan Life Ins. Co.*, 130 Fed. Appx. 679 (5th Cir. 2005). (App. 3-5)

The February 12, 2003 Memorandum Opinion and Order of U. S. District Judge Paul Brown is appended hereto. (App. 6-21)

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The second March 22, 2004 Memorandum Opinion and Order of U. S. District Judge Paul Brown is appended hereto. (App. 28-31)

The March 31, 2004 Order of U. S. District Judge Paul Brown is appended hereto. (App. 32)

The May 17, 2004 Memorandum Opinion and Order of U. S. District Judge Paul Brown is appended hereto. (App. 33-42). The May 17, 2004 Final Judgment of U. S. District Judge Paul Brown is appended hereto. (App.43)

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its opinion affirming the United States District Court judgment on May 9, 2005. A rehearing and en banc review was timely requested and denied on June 2, 2005. No extension of time was requested.

28 U.S.C. § 1254(1) confers jurisdiction upon the Supreme Court of the United States in this matter.